

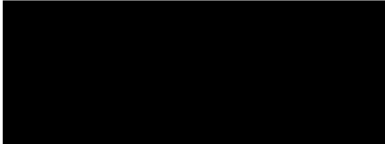


U.S. Department of Justice

Immigration and Naturalization Service

2

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE: [REDACTED] Office: Frankfurt

Date: MAR 10 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§  
212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C.  
1182(h) and (i)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Frankfurt, Germany, and is now before the Associate Commissioner for Examinations on appeal. The appeal is rejected. The officer in charge's decision will be withdrawn and the matter will be remanded for further action.

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible to the United States by a consular officer under § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant married a United States citizen in June 1998 and is the beneficiary of an approved immediate relative visa petition. The applicant seeks the above waiver in order to join his wife in the United States.

The officer in charge determined that the applicant was also inadmissible under § 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The officer in charge then concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, the applicant's wife states that the decision is incorrect because the question on the pilot visa waiver form asks if the person had ever been convicted in the last five years. The applicant's wife states that denying her the right to move to her home country with her husband would cause extreme hardship resulting in health problems.

The applicant's wife requests oral argument in this matter. 8 C.F.R. 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. The Service has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases which involve unique factors or issues of law which cannot be adequately addressed in writing. In this case, no cause for argument is shown. Consequently, the request is denied.

The issue of inadmissibility is not the purpose of this proceeding. Issues of inadmissibility are to be determined by the consular officer when an alien applies for a visa abroad. This proceeding must be limited to the issue of whether or not the applicant meets the statutory and discretionary requirements necessary for the exclusion ground to be waived. 22 C.F.R. 42.81 contains the necessary procedures for overcoming the refusal of an immigrant visa by a consular officer.

The record reflects the following:

(A) On December 23, 1986, the applicant was found guilty of the following five charges: (1) Assault Occasioning Actual Bodily Harm, (2) Grievous Bodily Harm, (3) Assault Occasioning Actual Bodily Harm, (4) Kidnapping, and (5)

Grievous Bodily Harm. He was sentenced to 18 months confinement on each charge to be served consecutively.

(B) On June 2, 1994, the applicant was found guilty of the following two charges: (2) Assault, and (2) Assault. He was admonished with the sentence deferred from May 20, 1993.

Service instructions at O.I. 212.7 specify that after receipt of a Waiver of Grounds of Inadmissibility (Form I-601) by a Service office, if grounds of inadmissibility other than those for which the waiver is sought are discovered, the application and all relating documents should be returned to the consular officer for reconsideration.

The April 17, 1999, memorandum in the record from the consular officer specifically stipulates that the applicant was found to be inadmissible only under § 212(a)(2)(A)(i)(I) of the Act due to convictions for assault and kidnapping. There is no evidence that the consular officer found the applicant inadmissible under § 212(a)(6)(C)(i) of the Act or that the consular officer reconsidered the matter based on that additional ground of inadmissibility. Therefore, the decision of the officer in charge will be withdrawn, and the matter will be remanded to him for further action and the entry of a new decision which, if adverse to the applicant, will be certified to the Associate Commissioner for review.

**ORDER:** The appeal is rejected. The decision of the officer in charge is withdrawn. The matter is remanded for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.